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Federal Communications Commission
Office of Secretary

Before The
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of)
)
Amendment of Section 2.106) ET Docket No. 95-18
of the Commission's Rules) RM-7927
to Allocate Spectrum at 2 GHz for)
Use by the Mobile-Satellite Service)
_____)

COMMENTS

Pursuant to Section 1.429 of the Commission's Rules, L/Q Licensee, Inc. ("LQL"), hereby submits its comments in support of the "Petition for Partial Reconsideration of the MSS Coalition" ("Petition") with respect to the Commission's initial decision in the above-referenced proceeding.¹ LQL is the licensee of Globalstar™, a low-earth orbiting satellite telecommunications system, which will operate in the 1.6/2.4 GHz bands.² Like anticipated 2 GHz MSS systems, Globalstar™ is designed to provide global satellite services, and so, LQL has an interest in the rules and policies adopted for use of the allocation for MSS in this proceeding.

¹ See Amendment of Section 2.106 of the Commission's Rules to Allocate Spectrum at 2 GHz for Use by the Mobile-Satellite Service, FCC 97-93 (released Mar. 14, 1997) ("Order" or "Further NPRM" as indicated in text).

² See Loral/Qualcomm Partnership, L.P., 10 FCC Rcd 2333 (Int'l Bur. 1995), aff'd, FCC 96-279 (released June 27, 1996); L/Q Licensee, Inc., DA 96-1924 (released Nov. 19, 1996).

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INTRODUCTION

In the Order, the Commission allocated the bands at 1990-2025 MHz and 2165-2200 MHz to MSS. Currently, the 1990-2025 MHz band is allocated for the Broadcast Auxiliary Service ("BAS"), and the 2165-2200 MHz band is allocated for Fixed Service ("FS") stations. The Commission also decided to replace the frequencies taken from BAS with 20 MHz of spectrum at 2110-2130 MHz, providing seven 15 MHz channels instead of the current BAS channel plan of one 18 MHz and six 17 MHz channels.

Since BAS stations cannot share frequencies with FS stations, relocation of BAS stations to 2110-2130 MHz will require relocation of FS stations currently operating in that band to bands allocated for FS stations in the Emerging Technologies proceeding.³ Order, ¶ 32. The Commission also announced in the Order that it plans to impose the costs of both the BAS and FS relocations on new 2 GHz MSS licensees.

In its Petition, the MSS Coalition has demonstrated that the Commission erred in adopting prematurely an allocation for BAS at 2110-2130 MHz and in adopting, perhaps unnecessarily, the plan for mandatory reimbursement of relocation costs by 2 GHz MSS licensees. Accordingly, LQL supports the Petitioners' request for reconsideration of these aspects of the Commission's Order.

³ See Redevelopment of Spectrum to Encourage Innovation in the Use of New Telecommunications Technologies, 8 FCC Rcd 6495 (1993).

I. THE COMMISSION'S DECISION TO ALLOCATE AN ADDITIONAL 20 MHz TO BAS IS PREMATURE.

In the Order, the Commission reached several implicit conclusions regarding the need for the additional 20 MHz for BAS: First, by providing only 105 MHz for BAS at 2025-2130 MHz, the Commission found that BAS does not require as much spectrum as the current allocation of 120 MHz in order to meet existing needs even for analog operations. Second, the Commission found, on the current record, that 15 MHz is an appropriate channel bandwidth for analog BAS stations. Third, the Commission concluded that seven channels should be provided for BAS in each market throughout the United States.

Through a Further NPRM, adopted contemporaneously with the Order, the Commission is compiling a record on a number of issues directly related to the accuracy of the findings identified above.⁴ Although the pleading cycle remains open, it is possible that the new record will demonstrate that it is unnecessary to use the 2110-2130 MHz for BAS. For example, in the Further NPRM, the Commission asked whether every market required the assignment of seven BAS channels. Further NPRM, ¶ 68. The Commission suggested that some markets may only need the five channels remaining after loss of the 1990-2025 MHz band.

⁴ The Commission suggests that the Further NPRM is seeking comment on "specific details of relocation." Further NPRM, ¶ 64. However, it is clear that the information provided in response to the Commission's inquiries could be used to reassess the need for 105 MHz for BAS.

The Commission also sought comment on whether the use of digital technology for BAS stations would allow smaller channel bandwidths for BAS, so that each station could operate in even less than 15 MHz.⁵ Further NPRM, ¶ 68. The Commission asked whether digital equipment would provide such capability and when such equipment would be available. The implicit suggestion is that incumbent BAS stations may be able to accomplish their existing needs with even less than the 105 MHz adopted for the service in the Order.

Thus, the record compiled in response to the Further NPRM may lead the Commission to conclusions which vitiate its findings in the Order regarding the amount of spectrum needed for BAS. The record may demonstrate that fewer than seven channels can be assigned for BAS and/or that use of digital technology would allow more efficient use of the available spectrum. In either case, the record may reflect that the allocation at 2025-2110 MHz would be sufficient for BAS. If the Commission determined that the allocation of 85 MHz were sufficient for BAS, then it would not be necessary to force MSS licensees to pay for relocation of BAS to 2110-2130 MHz and the consequent relocation of FS stations.

As the Petitioners point out, the courts have held that "an agency does not act rationally when it chooses and implements one policy and decides to consider

⁵ The MSS Coalition has submitted a technical study to demonstrate that, by using the spectrum more efficiently with digital equipment, BAS stations could operate with channel bandwidths significantly less than 15 MHz. See Petition for Partial Reconsideration, Exhibit A.

the merits of a potentially inconsistent policy in the very near future."⁶ In this case, the Commission has decided to force MSS licensees to embark upon a costly and administratively burdensome relocation process, but, at the same time, it is seeking to develop a record which may indicate that the entire relocation program is unnecessary. Given the substantial benefits to MSS which may accrue by waiting to develop a full record, and the time available before any MSS system needs to use the allocation at 2 GHz, the Commission should adopt the recommendation of the MSS Coalition and reconsider its decision to allocate the 2110-2130 MHz band to BAS, pending evaluation of the technical study submitted by Petitioners and the results of the Further NPRM.

II. UNDERWRITING THE COSTS OF RELOCATING BAS STATIONS WOULD HAVE AN ADVERSE EFFECT ON THE ABILITY OF MSS SYSTEMS TO PROVIDE SERVICE.

As the Petitioners have argued, the potential success of MSS satellite systems at 2 GHz would be diminished if the Commission adheres to its decision to require MSS licensees to underwrite the costs of relocating BAS stations to the 2110-2130 MHz band and FS stations to Emerging Technology bands. See Petition, at 33-34. This requirement would impair the ability of 2 GHz MSS operators to provide efficient and effective service in at least two respects.

⁶ ITT World Communications v. FCC, 725 F.2d 732, 754 (D.C. Cir. 1984); see Petition, at 8-9.

First, an increase in costs of the 2 GHz MSS systems through absorbing relocation costs poses a significant threat to their economic viability. These costs would have to be passed on to subscribers, increasing the cost of service, and thereby limiting the potential subscriber base from which to recover revenues. In its comments in this proceeding, COMSAT explained why this scenario is likely to occur if the Commission's relocation plan is used:

This combined expense will likely have a substantial impact on service costs. Most of the planned global MSS systems contemplate offering service to end-users at between \$1.00 and \$2.00 per minute. If relocation costs, just to access the U.S. market, are pushed above \$3.0 billion and the combined costs of relocation and building the system exceed the \$5.0 billion mark, the service price per minute would have to rise appreciably. We believe that service prices beyond the \$2.00-\$3.00 per minute level would result in a dramatic drop-off of customers in the mass market, leaving only the wealthy, international business traveller as customers. Global service provided only to a niche market is unlikely to succeed.⁷

Second, the uncertainty of how much each MSS licensee would be required to pay would make planning a business difficult. Such uncertainty would multiply the risks of developing the business to the point of deterring entry by new applicants. Imposing relocation costs on MSS licensees may thus have the effect of deterring development of competitive service at 2 GHz. On the other hand, by awaiting the results of the record to be developed in response to the Further NPRM, as suggested by the Petitioners, the Commission may be able to authorize broader participation in the service. Accordingly, to fulfill its vision for 2 GHz MSS of "creat[ing] opportunities to provide the public, especially rural Americans,

⁷ COMSAT Comments, at 14 (filed May 5, 1995).

with access to new and competitive services and technologies; stimulate economic development; and, create new high technology jobs in the United States,"⁸ the Commission should consider potential alternatives to relocation.

In addition to the impact on future 2 GHz MSS licensees, the Commission should also take into account the impact of a decision by the United States to require relocation of FS stations on other MSS services. At this date, the Commission has awarded licenses to seven global NGSO satellite systems, three Big LEO systems,⁹ three Little LEO systems,¹⁰ and the Teledesic broadband system in Ka-band.¹¹ The service providers of all the systems must seek spectrum assignments in the foreign countries they wish to serve. Once the United States initiates forced underwriting of relocation of FS stations at 2 GHz, foreign administrations are likely to consider the same in authorizing service for other global satellite systems if there are domestic services in the international allocation for MSS in these bands. It is contrary to the public interest for the Commission to take action which would hamper the efforts of U.S. MSS licensees

⁸ Amendment of Section 2.106 of the Commission's Rules to Allocate Spectrum at 2 GHz for Use by the Mobile-Satellite Service, 10 FCC Rcd 3230, ¶ 1 (1995).

⁹ See Loral/Qualcomm Partnership, L.P., 10 FCC Rcd 2333 (Int'l Bur. 1995); Motorola Satellite Communications, Inc., 10 FCC Rcd 2268 (Int'l Bur. 1995); TRW Inc., 10 FCC Rcd 2263 (Int'l Bur. 1995).

¹⁰ Orbital Communications Corporation, 9 FCC Rcd 6476 (1994), recon. 10 FCC Rcd 7801 (1995); STARSYS Global Positioning, Inc., 11 FCC Rcd 1237 (Int'l Bur. 1995); Volunteers In Technical Assistance, 11 FCC Rcd 1358 (Int'l Bur. 1995).

¹¹ Teledesic Corporation, DA 97-527 (released Mar. 14, 1997).

to institute service within any MSS allocation. Accordingly, the Commission should avoid requiring global MSS systems unnecessarily to incur costs related to relocation of incumbent terrestrial stations.

III. CONCLUSION

For the reasons set forth above, LQL recommends that the Commission reconsider the Order and await the results of the Further NPRM before imposing mandatory relocation costs on MSS licensees at 2 GHz.

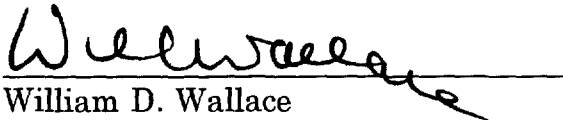
Respectfully submitted,

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CERTIFICATE OF SERVICE

I, William D. Wallace, hereby certify that I have on this 19th day of June, 1997, caused to be served true and correct copies of the foregoing "Comments" upon the following parties via hand-delivery (indicated by a *) or first-class United States mail, postage prepaid:

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A handwritten signature in black ink, appearing to read "William D. Wallace", written over a horizontal line.

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